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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.**

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Federal Communications Commission  
Office of Secretary

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In the Matter of )

Billed Party Preference for )  
InterLATA O+ Calls )  
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CC Docket No. 92-77

**SUPPLEMENTAL COMMENTS OF INMATE CALLING  
SERVICES PROVIDERS COALITION**

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**SUPPLEMENTAL COMMENTS OF INMATE CALLING  
SERVICES PROVIDERS COALITION**

The Inmate Calling Services Providers Coalition ("Coalition") hereby submits its supplemental comments in response to the Commission's Public Notice, DA 96-1695, released October 10, 1996 ("Public Notice"), requesting further comments on several issues in the above-captioned proceeding. In Section I below, the Coalition provides some general introductory comments and a summary of its rate disclosure proposal. In Section II, the Coalition responds to the specific questions posed by the Public Notice. In Section III, the Coalition details its proposal and explains why it believes that it effectively balances the interests of inmate callers and their friends and family on the one hand, and inmate service providers ("ISPs") on the other.

**I. INTRODUCTION AND SUMMARY OF THE COALITION'S PROPOSAL**

In the Second Further Notice of Proposed Rulemaking, FCC 96-253 (June 6, 1996) ("Rate Disclosure Notice"), in this proceeding, the Commission expressed concern over the excessive rates charged by a small minority of ISPs, a concern the Coalition very much shares. The Coalition recognizes that special measures may be required to

protect the recipients of inmate calls from excessive rates in light of the fact that they do not have a choice of service providers.

In providing that protection, however, the Commission must take into consideration its obligation under Section 276 to ensure that ISPs are fairly compensated. Having failed in the payphone proceeding to provide ISPs with desperately needed relief from artificially low state rate ceilings, the Commission must not interfere with the ability of ISPs to set interstate rates at reasonable levels.<sup>1</sup> The Commission must also avoid imposing unnecessary and unfair costs on ISPs as they transition to any disclosure obligation imposed by the Commission.<sup>2</sup> A large percentage of the installed base of inmate calling equipment is incapable of providing rate quotes.<sup>3</sup> The Commission should not require the premature changeout of such equipment before the end of its useful life.

In Section III below, the Coalition lays out a proposal which balances the need to protect inmates and their friends and families with the need to ensure that ISPs are able to recover fair compensation. In the Coalition's view, the Commission should impose two separate, complementary requirements on ISPs. First, the Commission should require, effective 30 days after the release of an order in this proceeding, that all ISPs charging rates in excess of 130% of the average of the Big Three's inmate rates must immediately begin to provide called parties with a warning message to that effect, and must provide the called party with a rate quote on-demand. Second, effective one year

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<sup>1</sup> See response to question no. 7 below.

<sup>2</sup> See response to question no. 5 below.

<sup>3</sup> See response to question no. 2 below.

after the effective date of the order, the Commission should require that all newly installed inmate calling equipment must provide rate quotes on demand on all calls. The additional requirement that ISPs charging in excess of the benchmark rate must provide a warning message would continue in effect.

This approach is consistent with the general tenor of the questions raised by the Public Notice, which suggests that the Commission is considering a generally applicable quote on-demand requirement rather than, or in addition to, mandatory disclosure above some rate benchmark. Under this approach, consumers will have the information they need to make informed choices in the marketplace and will be protected from the excessive rates charged by a small minority of inmate service providers ("ISPs"). At the same time, ISPs will retain flexibility in setting their rates, and will not be forced to prematurely change out the installed base of equipment.

## **II. THE QUESTIONS POSED BY THE PUBLIC NOTICE**

- 1. Are there any industries in which price disclosure to consumers at the point of purchase is not the normal practice? If so, what are those industries and what are the particular circumstances surrounding the development of those industries?**

The Coalition has no comment on this item.

- 2. What kinds of technologies (including payphone equipment and associated software) are currently available to provide on-demand call rating information for calls from payphones, other aggregator locations, and phones in correctional institutions that are provided for use by inmates?**

Because the inmate calling market is so specialized, there are only a handful of manufacturers of inmate calling equipment. Of those manufacturers, the majority do

not currently have equipment in the marketplace capable of providing rate quotes. According to data from the Coalition's members, it appears that less than 10-20% of the installed base of equipment has the capability.

- 3. Are there any telecommunications markets outside of the U.S. that already make use of price disclosure prior to call completion, for example, in the U.K.?**

The Coalition has no comment on this item.

- 4. Some commenters have claimed that price disclosure prior to call completion would create an unacceptable delay to consumers. Are there any studies that that substantiate or dispute this contention and are those studies available? Are there any studies available that provide indications of consumer satisfaction or dissatisfaction with 0+ services provided in this fashion?**

While the Coalition cannot point the Commission to any quantitative studies that have examined the issue, Coalition members have found that rate disclosure can be a burden as well as a benefit to consumers. First, mandatory rate disclosure (as opposed to disclosure on-demand) is an inconvenience to callers and called parties alike as it delays completion of all calls while the rate for a call is determined and announced, regardless of whether the called party wishes to receive the rate information. This delay can be as long as 15-30 seconds. Not only is this an inconvenience, it adds to the cost of the call and those additional costs must be passed through to all consumers.

Second, requiring rate quotes on all calls could have a numbing effect on consumers who, after hearing the same rate quote a number of times, would become increasingly less sensitive to the rate information. This is particularly likely to occur with respect to calls from inmates, who tend to repeatedly call the same small circle of

friends and family. To maximize the utility of rate information, the Commission should require the provision of quotes on-demand rather than mandatory rate disclosure. This will provide the called parties who wish to obtain rate information the opportunity to do so, without burdening those who do not want it.

**5. If some or all of the embedded equipment and software are incapable of providing audible notice to consumers for on-demand call rating, what time period would be reasonable for substituting equipment and software that is capable of doing so?**

If the Commission adopts a rate disclosure requirement, it is critical that the Commission tailor the requirement so as not to impose unnecessary and unfair costs on ISPs. As explained in response to question no. 2 above, the information available to the Coalition indicates that a large percentage of the installed base of inmate calling equipment is not currently capable of providing rate quotes on-demand, or, for that matter, any form of rate disclosure. Much of that equipment is, in other respects, state-of-the-art. Where an ISP is willing to comply with a reasonable rate benchmark, which ensures that inmate called parties are protected from excessive rates, the Commission should not force the premature changeout of such equipment before the end of its useful life. Doing so would impose burdensome costs on those ISPs who have voluntarily kept rates at reasonable levels. It would be a perverse outcome if those providers were put in the position of having to either take a huge financial loss or raise their rates significantly to fund the new equipment.<sup>4</sup> At the same time, it would be unfair

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<sup>4</sup> To the extent that the costs of upgrading equipment are prohibitive, some ISPs and jails might find it necessary to prohibit interstate calling, or restrict interstate calling to special telephones with limited inmate access. Such a result would be counter to the public interest.

if the Commission were to exempt from a disclosure requirement only those providers with equipment incapable of providing rate quotes; such an exemption would impose a competitive disadvantage on those providers who have already made the upgrade: they would, in effect, be penalized for having installed equipment that can provide rate quotes. Balancing these interests dictates the result that ISPs who are charging benchmark rates or lower should be able to continue to use their embedded equipment.

**6. What percentage of interstate 0+ calls do calls from correctional institutions constitute, both in quantity and dollar volume, over the last five years?**

The Coalition has no comment on this item.

**7. What effects, if any, will the recent Report and Order in *In the Matter of Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation*, CC Docket No. 96-128, 91-35, FCC 96-388 (released September 20, 1996) ("Payphone Order") have on this proceeding?**

The primary effect of the Payphone Order on this proceeding is to leave totally unaddressed the issue of fair compensation and cost recovery for ISPs, making it more difficult for ISPs to comply with any benchmarks or other requirements that the Commission might impose that further restrict the ability of ISPs to recover fair compensation for use of their inmate calling equipment. Having failed to provide fair compensation for inmate calls in the payphone proceeding, the Commission must not adopt any approach that further constrains the ability of ISPs to provide service.

As the Coalition demonstrated in its comments in the payphone proceeding, ISPs are prevented from receiving fair compensation for many local and intraLATA calls

because state rate ceilings limit rates for those calls to standard collect rates, notwithstanding the considerable additional costs of providing service in the confinement facility environment. As a result of those artificially low state rate ceilings, many ISPs are losing money on local and intraLATA calls made from their facilities. For example, according to data from the independent ISPs operating the majority of county jails in North Carolina, as a result of the rate ceilings in effect in that state, ISPs are losing \$.46 on every local call and \$1.10 on every intraLATA toll call. As is typical of calling patterns from most local and county jails, local calls represent 73% of the calling traffic and intraLATA calls 12%. Thus, the North Carolina providers are losing money on 85% of their calls. Such losses are not unique to North Carolina. In fact, similar losses are incurred in many parts of the country, as demonstrated by the Coalition's comments in the payphone proceeding.

To remedy the situation, the Coalition proposed in the payphone proceeding that the Commission prescribe a \$.90 per-call inmate system element that would have compensated ISPs for the unique costs of providing the equipment and services necessary for inmate calling, without the Commission having to interfere with state rates. The Commission, however, rejected the Coalition's proposal, notwithstanding its obligation under Section 276 to provide fair compensation for all calls.

As the Coalition explained in its reply comments in the instant proceeding, some ISPs are currently forced to charge more for interstate calls to help make up their losses on intrastate calls.<sup>5</sup> If the Commission had prescribed per-call compensation for

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<sup>5</sup> The Commission should not be under the illusion that ISPs can come  
(Footnote continued)

those intrastate calls as the Coalition suggested, it would have relieved that pressure on interstate rates. Having failed to do so, the Commission may not now set interstate benchmarks that would further constrain the ability of ISPs to receive fair compensation. It is well established that regulatory commissions may not close their eyes to the interdependency of interstate and intrastate rates. Conway Corp. v. Federal Power Commission, 510 F.2d 1264 (D.C. Cir. 1975), aff'd 426 U.S. 271 (1976). Where, as here, the Commission has an affirmative duty pursuant to Section 276 of the Act to ensure fair compensation for all calls, the Conway principle applies even more strongly. Having failed to prescribe fair compensation for intrastate 0+ calls, it would compound the error for the Commission to refuse to take into account in this proceeding the absence of fair compensation for intrastate inmate calls.<sup>6</sup>

### **III. THE COALITION'S PROPOSAL: THE COMMISSION SHOULD ADOPT A RATE QUOTE ON-DEMAND APPROACH IN COMBINATION WITH BENCHMARK RATES SET AT REASONABLE LEVELS**

The questions posed by the Public Notice suggest that the Commission is possibly considering adopting a rate quote on-demand requirement in lieu of, or in addition to, the disclosure-over-a-benchmark regime that it originally proposed in the Rate Disclosure Notice. The Coalition supports this basic approach, but believes that

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(Footnote continued)

anywhere near being able to completely recover their losses on intrastate calls through their interstate rates. Interstate calls constitute a small percentage of independent ISP traffic.

<sup>6</sup>

However, Conway does not stand for the proposition that by taking action with respect to interstate rates, the Commission relieves itself of any independently applicable obligations with respect to intrastate rates. The Coalition reserves the right to renew its request to the Commission for relief under Section 276 in the event that a given state does not adequately address fair compensation.

certain qualifications are necessary to both (1) give additional protection to inmates and their called parties from excessive rates, and (2) ensure that ISPs are able to set rates at reasonable levels and are not subject to unnecessary and burdensome costs.

Under the Coalition's proposal, ISPs would be subject to two separate, but complementary requirements. The first requirement is that, 30 days after the effective date of the adopting order, all ISPs charging in excess of a Commission-prescribed benchmark rate must provide the called party with the opportunity to receive a rate quote on-demand. In addition, the ISP would be required to give a warning message to the effect that it is charging rates in excess of a federally-approved rate benchmark. Any providers charging less than the benchmark would be under no disclosure obligation (except as discussed below). Because any provider that wishes to charge rates higher than the benchmark must ensure that its equipment is capable of providing rate quotes and a warning message, the benchmark-based requirement will tend to encourage ISPs charging above the benchmark to reduce their rates.

In order to provide ISPs with enough flexibility in setting their interstate rates in the wake of the Commission's failure to provide fair compensation, the Commission should set the benchmark at 130% of the Big Three's current inmate rates, indexed to today's price levels. In its earlier comments in this proceeding, the Coalition advocated a rate benchmark for inmate calling at either 115% of the Big Three's inmate rates or at 115% of their non-inmate rates<sup>7</sup> if the Commission prescribed a \$.90 per-call compensation element for inmate calls. The Coalition's support for a rate benchmark

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<sup>7</sup> Those two proposals would have yielded essentially the same benchmark rate because the Big Three's rates each contain a roughly \$.90 inmate compensation element.

set at either of those levels, however, was predicated on the Commission affording some relief to ISPs with respect to intrastate calls. Having failed to do so, as discussed more fully in response to question no. 7 above, the Commission must provide ISPs with additional flexibility in setting their interstate rates in order to recover some of their losses on intrastate calls.

Setting such a benchmark will provide incentive for ISPs to reduce rates, and will not encourage rate increases. It has been argued that setting a rate benchmark will encourage rates to rise to the benchmark. This argument is not supported by logic or facts. There is no reason to believe that those ISPs who, in the absence of a benchmark are charging less than 130% of the Big Three rates, will lose their incentives for doing so because of the adoption of a benchmark at the 130% level.

The second requirement that the Coalition's proposal would place on ISPs is that any ISP using equipment installed later than one year after the effective date of the order must provide rate quotes on-demand on all calls. This requirement is in addition to the first requirement. Thus, for any call at rates over the benchmark, the ISP would be required to provide both a quote on-demand and the warning message described above. For calls below the benchmark, the ISP would only be required to provide a rate quote on demand. By phasing in the quote on-demand requirement after a year, the Commission will avoid requiring ISPs with equipment in place to purchase new equipment prematurely. At the same time, inmates and their called parties will be protected from unusually high charges because all ISPs charging more than the

benchmark will be required to either (1) install equipment capable of providing a warning message and rate quotes on-demand, or (2) lower their rates.

The Coalition's proposal will give inmate callers and the people they call the information they need to make informed decisions about how long and how often to talk. While inmates do not have the option of going to another service provider if the called party believes the quoted rate is too high, the called party does have the option of refusing the call, or electing to talk for a shorter time or less frequently. Furthermore, the availability of rate quote on-demand will allow the billed party to understand and anticipate the charges for a call, mitigating any "rate shock" that might occur when the bill arrives a month later. The Coalition believes that many of the complaints to the Commission and state PUCs regarding inmate rates are driven by the fact that the public is generally unaware of the unique costs of providing inmate calling services, and the higher rates and/or surcharges necessary to defray those costs. Making rates available on-demand, especially when coupled with the warning message for unusually high rates, will go a long way towards alleviating such misunderstandings.

This proposal is also responsive to the concern expressed by the Commission in the Rate Disclosure Notice regarding the small minority of ISPs who are charging excessive rates, a concern very much shared by the Coalition. Requiring a warning message on calls for which rates exceed the benchmark will, as explained above, function as a significant encouragement for ISPs to avoid charging unusually high rates. In addition, requiring quotes on-demand will place downward pressure on any excessive

rates as high-charging providers begin to see their call volumes drop once callers become aware of what they are being charged.

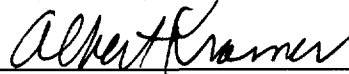
The Commission must be aggressive in enforcing compliance with whatever measures it ultimately adopts. The worst case scenario would be for the Commission to mandate a requirement that imposes considerable new costs on the great majority of ISPs charging reasonable, fair rates but that does not prevent the minority of high-charging ISPs from continuing their unscrupulous practices.

#### IV. CONCLUSION

For the reasons shown above, the Commission should:

1. Thirty days after the effective date of the order in this proceeding, require all ISPs charging in excess of 130% of the average of the Big Three's inmate rates to provide a warning message to that effect, and provide a rate quote on-demand.
2. Require that any equipment, installed one year after the effective date of the order or later, provide rate quotes on-demand on all calls.

Respectfully submitted,



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